



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-17-0067; SC17-959-4]

Onions Grown in South Texas; Proposed Amendments to Marketing Order 959 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes amendments to Marketing Order No. 959, which regulates the handling of onions grown in South Texas. The proposed amendments would reduce the size of the South Texas Onion Committee (Committee) and make conforming and clarifying amendments as needed.

DATES: The referendum will be conducted from August 6, 2018 through August 27, 2018. The representative period for the referendum is August 1, 2016 through July 31, 2017.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Julie Santoboni, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty

Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Geronimo.Quinones@ams.usda.gov or Julie.Santoboni@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of onion

producers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering onions grown in South Texas.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity

of the proposed amendment, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on June 7, 2017. The proposal would amend the Order by reducing the size of the Committee from 34 to 26 members. The change would remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts. Conforming and clarifying changes would also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 would be removed and reserved.

A proposed rule soliciting comments on the proposed amendment was issued on February 23, 2018 and published in the *Federal Register* on March 1, 2018 (83 FR 8804). Two opposing comments were received. AMS will conduct a

producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendment if it is favored by producers in the referendum.

The Committee's recommended amendments would amend the Order by reducing the size of the Committee from 34 to 26 members. The reduction would remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts (eight members total).

Proposal - Reduce Committee Size

Section 959.22 provides that the Committee consists of seventeen members, ten of whom shall be producers and seven of whom shall be handlers. For each member of the Committee there shall be an alternate.

This proposal would amend § 959.22 by reducing the size of the Committee from 34 to 26 members. The Committee size is based on membership per district. The Order initially established five districts, which were reestablished as two districts in § 959.110. Section 959.111 reapportioned the 34 Committee members between the two districts so that District 1 was comprised of 20

members and alternates and District 1 was comprised of 14 members and alternates. However, due to contractions in the size of the industry, the Committee has had difficulties finding nominees to fill positions on the Committee. The change would remove one voting producer and one voting handler member, and one producer and handler alternate member from each of the two districts (eight members total).

This proposed action is necessary to adjust the number of handlers and producers on the Committee to reflect industry consolidation. There has been a decrease in the number of onion producers and handlers over the past 15 years. The current structure of the Committee requires 34 members, with half the members elected on biennial terms. Many seats remain vacant, as finding sufficient members to nominate has been challenging. Having a smaller size committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

For the reasons stated above, it is proposed that § 959.22 be modified to reduce the size of the Committee from 34 to 26 members. Conforming and clarifying changes would

also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 would be removed and reserved.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 60 producers of onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on information from the National Agricultural Statistics Service, the weighted grower price for South Texas onions during the 2015-16 season was approximately \$12.30 per 50-pound equivalent. Furthermore, according to Committee data, total shipments were approximately three million 50-pound equivalents for the 2015-16 season with a total 2015-16 crop value estimated at \$37 million. Dividing the crop value by the estimated number of producers (60) yields an estimated average receipt per producer of \$617,000. This is below the \$750,000 SBA definition of small producers. The average handler price for South Texas onions during the 2015-16 season was approximately \$14.05 per 50-pound equivalent. Multiplying the average handler price by shipment information of 3 million 50-pound equivalent results in an estimated handler-level value of \$42 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of \$1.4 million, which is below the SBA definition of small agricultural service firms. Assuming a normal distribution, most producers and handlers of South Texas onions may be classified as small entities.

The amendment recommended by the Committee would

reduce the size of the Committee from 34 to 26 members under the Order. The reduction would remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts.

The Committee's proposed amendment was unanimously recommended at a meeting on June 7, 2017. If this proposal is approved in the referendum, there would be no direct financial effects on producers or handlers. Over the past 15 years there has been a 31-percent decrease in the number of onion producers, and a 34-percent decrease in the number of handlers in the production area. Many seats on the Committee remain vacant, as it has been challenging to find sufficient nominees. Having a smaller size Committee should enable it to fulfill those membership and quorum requirements.

AMS believes this change will serve the needs of the Committee and the industry thereby ensuring a more efficient and orderly flow of business. No economic impact is expected if the amendment is approved because it would not establish any regulatory requirements on handlers, nor does it contain any assessment or funding implications.

There would be no change in financial costs, reporting, or recordkeeping requirements if this proposal is approved.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes that given reductions in the size of the industry, a smaller Committee size is necessary in order to ensure its ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meeting was widely publicized throughout the South Texas onion production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 7, 2017, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposal.

A proposed rule concerning this action was published in the *Federal Register* on March 1, 2018 (83 FR 8804). Copies of the rule were mailed or sent via facsimile to all Committee members and South Texas onion handlers. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day

comment period ending April 30, 2018, was provided to allow interested persons to respond to the proposal.

Two comments were received. The first comment suggested that decreasing the Committee size was an inefficient use of government resources and those resources should be allocated to other more important initiatives. The second comment contended that having more members on the Committee might lead to better discussions.

The reduction in Committee size was recommended by representatives responsible for locally administering the Order and representing the industry's best interest. As stated above, because of a consolidation within the industry, Committee seats have been left vacant. Without a full Committee or enough members to meet quorum requirements, Committee meetings are ineffective and an inefficient use of Committee and industry resources. Therefore, this amendment should increase efficient use of resources. Additionally, AMS is pursuing this amendment through informal rulemaking as opposed to formal rulemaking. This will spare resources being expended on a public hearing.

In response to the second comment, all Committee meetings are open to public and industry attendance. Attendees have an opportunity to ask questions and provide comments. Therefore, discussion is not limited by the number of Committee members.

Because of the above, no changes will be made to the proposed amendment based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the March 1, 2018, issue of the *Federal Register* are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Onions Grown in South Texas." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire proposed rule be published in the *Federal Register*.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400-407) to determine whether the annexed order amending the Order regulating the handling of onions grown in South Texas is approved by growers, as defined under the terms of the Order, who during the representative period were engaged in the production of onions in the production area. The representative period for the conduct of such referendum is hereby determined to be August 1, 2016 through July 31, 2017.

The agents designated by the Secretary to conduct the referendum are Doris Jamieson and Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA;

Telephone: (863) 324-3375, Fax: (863) 325-8793, or Email:
Doris.Jamieson@ams.usda.gov or
Christian.Nissen@ams.usda.gov, respectively.

**Order Amending the Order Regulating the Handling of
Onions Grown in South Texas¹**

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby proposed to be further amended, and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

2. The Order, as amended, and as hereby proposed to be further amended, regulates the handling of onions grown in South Texas in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced in the production area; and

5. All handling of onions produced or packed in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator on February 23, 2018 and published in the *Federal Register* (83 FR 8804) on March 1, 2018, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

Dated: July 19, 2018.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 959 as follows:

PART 959 – ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 959.22 to read as follows:

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of thirteen members, eight of whom shall be producers and five of whom shall be handlers, is hereby established. For each member of the Committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

3. Revise § 959.24 to read as follows:

§ 959.24 Districts.

To determine a basis for selecting Committee members, the following districts of the production area are hereby established:

(a) *District No. 1:* (Coastal Bend-Lower Valley) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

(b) *District No. 2:* (Laredo-Winter Garden) The Counties of Zapata, Webb, Jim Hogg De Witt, Wilson, Atascosa, Karnes Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

4. Revise § 959.26 to read as follows:

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to §§ 959.24 or 959.25. Selections shall be as follows:

(a) *District No. 1:* five producer members and alternates; three handler members and alternates.

(b) *District No. 2:* three producer members and alternates; two handler members and alternates.

5. Amend § 959.32 by revising paragraph (a) to read as follows:

§ 959.32 Procedure.

(a) Nine members of the Committee shall be necessary to constitute a quorum. Seven concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any Committee action. At assembled meetings all votes shall be cast in person.

* * * * *

§§ 959.110 and 959.111 [Removed and Reserved].

6. Remove and reserve §§ 959.110 and 959.111.

BILLING CODE 3410-02 P

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